

All other time periods applicable to this part are tied to the filing of a notice of appeal and begin on the first day following that filing.

(2) All time periods in this rule are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing a notice of appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* It is the responsibility of the appellant to file the notice on or before the last day of the filing period. In the event of question, a legible postmark will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely filing of the appeal. Notices of appeal that are filed before the filing period specified in the published legal notice shall be accepted, but premature filing does not affect timeframes specified in this rule.

(d) *Time extensions.* (1) The 45-day/90-day filing periods for a notice of appeal are not extendable.

(2) Time extensions are not permitted except as provided in §§ 217.12, 217.13, and 217.17 of this subpart.

(e) Upon receipt of a timely Notice of Appeal, the Reviewing Officer shall immediately forward a copy of it to the Deciding Officer.

(f) *Appeal decision.* Unless time has been extended as provided for in §§ 217.12 and 217.13, the Reviewing Officer shall not exceed the following time periods for rendering an appeal decision:

(1) An appeal of a land and resource management plan approval, significant amendment, or revision, or on a programmatic decision documented in a Record of Decision, not more than 160 days from the date the notice of appeal was filed.

(2) In the event of multiple appeals of the same decision, the appeal decision date shall be calculated from the filing date of the last notice of appeal.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990; 56 FR 4918, Feb. 6, 1991; 58 FR 58916, Nov. 4, 1993]

§ 217.9 Content of a notice of appeal.

(a) It is the responsibility of those who appeal a decision under this part to provide a Reviewing Officer sufficient narrative evidence and argument to show why the decision by the lower level officer should be changed or reversed.

(b) At a minimum, a written notice of appeal filed with the Reviewing Officer must:

(1) State that the document is a Notice of Appeal filed pursuant to 36 CFR part 217;

(2) List the name, address, and telephone number of the appellant;

(3) Identify the decision about which the requester objects;

(4) Identify the document in which the decision is contained by title and subject, date of the decision, and name and title of the Deciding Officer.

(5) Identify specifically that portion of the decision or decision document to which the requester objects;

(6) State the reasons for objecting, including issues of fact, law, regulation, or policy, and, if applicable, specifically how the decision violates law, regulation, or policy; and

(7) Identify the specific change(s) in the decision that the appellant seeks.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990; 56 FR 4918, Feb. 6, 1991]

§ 217.10 Implementation and stays of decisions.

(a) Implementation of any decision subject to appeal pursuant to this part shall not occur for 7 calendar days following publication of the legal notice of the decision as required in this part.

(b) Requests to stay the approval of land and resource management plans prepared pursuant to 36 CFR part 219 shall not be granted. However, requests to stay implementation of a project or activity included in such a plan will be considered as provided for in paragraph (c).

(c) Where a project or activity would be implemented before an appeal decision could be issued, the Reviewing Officer shall consider written requests to stay implementation of that decision pending completion of the review.

(d) To request a stay of implementation, an appellant must—

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(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), intervenor(s), and to the Deciding Officer; and

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area affected by the activity(ies) to be stopped; and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(e) The Reviewing Officer shall rule on stay requests within 10 days of receipt of a request.

(f) In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(g) A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to the appellant(s), intervenor(s), and the Deciding Officer.

(h) A decision may be implemented during a review unless the Reviewing Officer has granted a stay.

(i) A Reviewing Officer's decision on a request to stay implementation of a project or activity included in a Land and Resource Management Plan or significant amendment or revision to the plan is not subject to discretionary review at the next administrative level.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7896, Mar. 6, 1990; 56 FR 4918, Feb. 6, 1991; 58 FR 58916, Nov. 4, 1993]

§217.11 Dismissal without review.

(a) A Reviewing Officer shall dismiss an appeal and close the appeal record without decision on the merits when:

(1) The notice is not filed within the time specified in §217.8 of this part;

(2) The requested relief or change cannot be granted under law, fact, or regulation existing when the decision was made.

(3) The notice of appeal fails to meet the minimum requirements of §217.9 of this part to such an extent that the Reviewing Officer lacks adequate information on which to base a decision;

(4) The decision at issue is being appealed under another administrative proceeding;

(5) The decision is excluded from appeal pursuant to §217.4 of this part;

(6) The appellant(s) withdraws the appeal;

(7) The Deciding Officer withdraws the appealed decision; or

(8) The Chief has invoked the provisions of §217.18 of this part.

(b) The Reviewing Officer shall give written notice of a dismissal to all participants that includes an explanation of why the appeal is dismissed.

(c) A Reviewing Officer's dismissal decision is subject to discretionary review at the next administrative level as provided for in §217.7(d) of this part, except when a dismissal decision results from withdrawal of an appeal by an appellant or withdrawal of the initial decision by the Deciding Officer.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7896, Mar. 6, 1990; 56 FR 4918, Feb. 6, 1991]

§217.12 Resolution of issues.

(a) When a decision is appealed, appellants or intervenors may request meetings with the Deciding Officer to discuss the appeal, either together or separately, to narrow issues, agree on